IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 456 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHABEN W/O CHANDRESHBHAI TAILOR

Versus

CHANDRESHBHAI @ CHNDRAKANT BABUBHAI TAILOR

Appearance:

1. Misc.Civil Application No. 456 of 2004

HL PATEL ADVOCATES for Petitioner No. 1

RULE SERVED BY DS for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 21/06/2004

ORAL JUDGEMENT

1. Heard learned Advocate Ms.Tejal Joshi for learned Advocate Mr. H.L.Patel for the petitioner. Respondent is served.

2. By filing this Application under Section 24 of the Civil Procedure Code, a relief is claimed to transfer Hindu Marriage Petition No. 39 of 2001 pending before the Court of Civil Judge (SD), Anand, to the court of Civil Judge (SD), Patan.

3. Present petitioner is wife while respondent is husband. Their marriage took place long before on 4.2.1991 at Ahmedabad, and out of this wedlock, the parties have 2 children, a boy aged 8 years and a girl aged 6 years. As averments made in the petition, the petitioner was mentally and physically tortured and dowry demands were made, which driven the petitioner to reside with her parents at village Ganget, Taluka Chanasma. It appears that the petitioner filed Hindu Marriage Petition No. 25 of 2001 for restitution of conjugal rights in the Court of Civil Judge (SD) at Patan wherein an application for interim maintenance under Sections 9 and 24 of the Hindu Marriage Act also came to be filed which was allowed by learned Civil Judge (SD), Patan, vide his order dated 9.1.2002 to the extent that the petitioner was awarded maintenance of Rs.1,000/- monthly from the opponent. It appears that the present opponent husband also preferred one HMP bearing No. 39 of 2001 in the Court of Civil Judge (SD), Anand, for divorce and the said petition is pending. Therefore, on the ground that since the petitioner is deserted wife and though interim alimony is awarded to her, the amount is meagre and that she being a lady, somebody is required to accompany her while she goes to attend the court at Anand in Marriage Petition No.39 of 2001 filed by the opponent husband, it is urged that it becomes very difficult for her to arrange the company of a male member to go to Anand and attend the proceedings filed by the husband. On these grounds, this petition is filed.

4. In view of the above grounds mentioned in the petition and urged before this Court and in view of the fact that though interim alimony is granted to the petitioner but the amount is not sufficient to cope up with expenses to go to Anand, in the interest of justice, the Hindu Marriage Petition No.39 of 2001 pending before the Court of Civil Judge (SD) Anand, filed by the present opponent, is required to be transferred to the Court of Civil Judge (SD) at Patan. In reply to the Notice of Rule, opponent has not turned up and, therefore, legitimate inference would be the opponent may be put to less hardship than the wife in directing transfer of the Hindu Marriage Petition No. 39 of 2001.

4. For the reasons aforesaid, this Petition is allowed. Hindu Marriage Petition No. 39 of 2001 filed by the present opponent husband and pending in the Court of Civil Judge (SD), Anand is directed to be transferred to the Court of Civil Judge (SD), Patan. Learned Civil Judge (SD), Anand, is directed to transmit the Record and Proceedings of the said Hindu Marriage Petition No.39 of 2001 through District Judge immediately to Civil Judge (SD), Patan. On so receiving the Record and Proceedings by Civil Judge (SD), Patan, the said Hindu Marriage Petition No.39 of 2001 shall be registered and shall be dealt with and disposed of according to law by learned Civil Judge (SD), Patan. Rule made absolute to the above extent.

(J.R.Vora, J.)

p.n.nair